IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

CRL.A.No. 1193 of 2001()

CC.592/2001 of JUDL.MAGISTRATE OF FIRST CLASS, PALA
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APPELLANT: COMPLAINANT

P.S.JALEEL, PUTHENPURACKAL HOUSE,
ERATTUPETTA P.O., THEKKEKKARA.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS: ACCUSED & NOT PARTY.
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1. **M.D.THOMAS, PROPRIETOR, RED LAND TEA FACTORY, MULLORATHU HOUSE, NADACKAL KARA, ERATTUPETTA.**

2. **STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY ADV. SRI.RAJU K.MATHEWS
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.1193 of 2001

Dated this the 28th day of June, 2007

JUDGMENT

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that towards the discharge of liability, the accused issued cheque for Rs.1,20,000/- dated 14.8.97 drawn on SBT Elappara branch which when presented got dishonoured for want of funds in the account of the accused. The statutory notice demanding the amount was issued. No reply was received nor was any amount paid.

3. The evidence adduced in the matter consisted the testimony of PW1 and Exts. P1 to P6. The defence examined DW1, the bank manager. PW1, the complainant has testified with respect to the issue of the cheque which he has stated in the complaint that the same was collected by him from the house of the accused and the cheque was handed over to him by the

wife of the accused. He has also proved the documents to prove the dishonour of the cheque, issuance of the notice and receipt of the same by the accused. The suggestion in the cross examination of the complainant is with respect to the source of the amount and to the records kept by him as to the amounts due and that with respect to the involvement of one Kamaluddin and as to the complaint by the accused to the superintendent of police and that the blank cheque that was entrusted to Kamaluddin who was the former employee of the accused was misused by Kamaluddin through the complainant and that the previous and subsequent cheque leaves of the particular cheque book has been presented much earlier. It was also suggested that only a sum of Rs.20,000/- in figures is written in the impugned cheque and the number one has been added by the complainant.

4. I find that the findings of the court below, on the basis of the suggestions of the accused appears to be totally misplaced. It is to be noted that the accused does not have a consistent case. At one time, it is suggested that it is blank

cheque that was entrusted to Kamaluddin and the same has been misused. It is also suggested that the figure written in the cheque is Rs.20,000/- and one has been added. It is quite improbable that only Rs.20,000/- is to be written in figures without writing the amount in letters. I find that the execution of the cheque has been proved by PW1. The accused has not adduced any evidence to rebut the statutory presumptions. Even reply notice has not been sent. Nothing has been brought out in the evidence of PW1 to draw the presumption that he is not having the sufficient resources at the time. The evidence of the bank manager would only show that only the particular cheque book has been issued in April 1991. It cannot from the above circumstances alone to hold that the cheque was one which was entrusted to Kamaluddin and Kamaluddin misused the same through the complainant.

5. I find that the evidence adduced in the matter do establish beyond reasonable doubt that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act. The finding of the court below is set aside. The accused is

convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo imprisonment till the rising of the court and to pay Rs.1,20,000/- to the complainant and in default, to undergo simple imprisonment for three months. The accused/respondent is granted six months' time to remit the amount of compensation. He shall appear before the Judicial First Class Magistrate Court, Pala on 18.12.2007 to receive the sentence.

The appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl